REMARKS

Claims 1-39 are currently pending in the application. By this amendment, claims 26, 28, 29 and 36 are amended and claim 39 is added for the Examiner's consideration. The above amendments and added claim 39 do not add new matter to the application and are fully supported by the specification. For example, support for the amendments is provided at Figures 4 and 5, and the description thereof, in addition to the original claims. The specification is also amended to correct minor typographical errors. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

35 U.S.C. §112 Rejection

Claim 29 was rejected under 35 U.S.C. §112, 2nd paragraph. This rejection is respectfully traversed in view of the amendment made to claim 29. Specifically, claim 29 is amended to correct antecedent basis to the receptacle positioner. Claim 29 is also amended to delete reference to a cover of the container. Accordingly, Applicants respectfully request that the rejection over claim 29 be withdrawn.

35 U.S.C. §102 Rejection

Claims 1-3, 6-8, 11-13, 15-19, 22-24, 26-28, 30-32 and 34-38 were rejected under 35 U.S.C. §102(a) for being anticipated by U. S. Publication No. 2003/0108416 to Schererz. This rejection is respectfully traversed.

In order to reject a claim under 35 U.S.C. § 102, a single prior art reference must contain each and every limitation of the claim, either expressly or under the doctrine of inherency. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570 (Fed. Circ), cert. denied, 488 U.S. 892 (1988). To "contain" the limitation the reference must explicitly describe the limitation, or describe an operation inherently requiring the limitation, completely enough to place limitation "in the possession of the public." *In re Epstein*, 32 F.3d 1559, 31 USPQd 1817 (Fed. Cir. 1994). Applicants submit that the use of Schererz does not meet this criteria.

The Schererz Reference

In Schererz, a stationary frame 1 comprises three successive stacking devices 20. The stacking devices include a pivoting unit 2, which pivots between a substantially upright or top position and a horizontal or loading position. The pivoting unit 2 includes a container receiver 11 for accommodating a container 3 (Paragraph 0021). A transportation path includes successively arranged and pivoting endless-loop band transporting modules 6. Rotating

foam rolls 5 serve to press the objects against the surface of the bands. If an object has to be stacked into a select container, then a selected transporting module 6 pivots downwards and the object in question is guided into the container 3 via transporting module 6 and inserted into a stacking position. (Paragraph 0022)

A horizontal extension unit 10 is included with the pivoting unit 2, which includes telescoping tracks which extend away from the frame and towards an operator. The pivoting unit installation facilitates manual extension which may be performed when the container is in a top position. (Paragraph 0024) A container receiver 11 includes a stacking aid 12, which, as shown in FIG. 4, includes a lateral wall 15 against which inserted mail pieces may be aligned. A guiding mechanism 14 for the guiding the mail pieces into the container 3 is also provided. The guiding mechanism 14 includes a bin level sensor 16 used to determine the height of the uppermost object in stack 13. A lowerable, traveling stacking bottom 17 is also provided. (Paragraph 0026)

In operation, the container 3 is centered in the container receiver 11 on the pivoting unit 2. The pivoting unit 2 pivots into the stacking position and the mail pieces are inserted. If the level sensor 16 registers a growth of the stack 13, that the stacking bottom 17 is lowered until the respective top object of the stack 13 has an optimal distance to the insertion level for the stacking of the next object. (Paragraph 0028). For changing containers, the pivoting unit 2 is

pivoted into the container changing position. The operator operates the horizontal extension unit 10 and pulls out the fully charged container 3 from under the horizontally running route of the transportation module 6. It is now possible to manually lift the stacking aids 12 out from within the container 3. The fully loaded container 3 can be exchanged with an empty one. (Paragraph 0031)

Independent Claim 1

Contrary to Schererz, claim 1 recites, in part,

> .... at least one corresponding diverting mechanism including:
> a feeding area;
> a diverting arm swingable between an open position and a closed position, in the open position, the diverting arm allowing product to enter the feeding area; and
> an ejection station proximate to the feeding area, the ejection station injecting the product into the container after the product enters the feeding area via movement of the diverting arm.

Schererz does not have a diverting arm swingable between an open position and a closed position. In Schererz, a transportation path includes successively arranged and pivoting endless-loop band transporting modules 6. The endless-loop band transporting module simply pivots downwards, but there is no open or closed position, as in the claimed invention. Moreover, the movement of the module 6 will not dictate whether the mail will be allowed to

enter a feeding area (which is not even present in the Schererz disclosure). As seen in the Figures of Schererz, the mail will always pass by the rollers 5 and a distal end of the module 6, regardless of the modules' position.

Additionally, Schererz does not include a feeding area and an ejection station. In Schererz, there are only the modules 6 which pivot upwards and downwards. In the downward position, the mail objects simply are guided down the transporting module to the container. There is no separate feeding area or ejection station.

The Examiner, though, is of the opinion that Schererz shows an ejection station, e.g., pinch belt 5 and 6. First, reference numerals 5 and 6 are not pinch belts. Reference numeral 6 is a belt; whereas, reference numeral 5 is a foam roller. Second, the belt 6 and foam roller 5 is not an ejection station. Instead, the foam rollers "serve to press the objects against the surface of the band". Also, it is noted that the Examiner does not specifically direct Applicants' attention to any feeding area.

Independent Claim 15

Contrary to Schererz, claim 15 recites, in part,

> at least one diverting mechanism injecting product into a container and including:
> a feeding area; and

> an ejection station comprising a pinch belt configuration that allows injection of the product into the container.

Schererz does not show a feeding area and an ejection station comprising a pinch belt. As noted above, in Schererz, reference numerals 5 and 6 are not pinch belts. Reference numeral 6 is a belt; whereas, reference numeral 5 is a foam roller. Second, the belt 6 and foam roller 5 is not an ejection station. Instead, the foam rollers "serve to press the objects against the surface of the band".

Independent Claims 26 and 32

Contrary to Schererz, claim 26 recites, in part,

> a control operable for activating the container positioner to:
> increment the container a distance during stacking of the product ....

Claim 32 recites, in part, a method of stacking the product in a vertical orientation. The method includes, in part,

> .... injecting product into the container in a vertically stacked orientation;
> indexing the container a predetermined distance;
> continuing injecting product into the container in a vertically stacked orientation; ...; and
> transporting the container away in the substantially horizontal plane away from the injection area.

The Examiner is of the opinion that Schererz shows a mechanism for indexing the container, at reference numeral 10. However, reference numeral 10, in Schererz, represents the horizontal extension unit 10. The horizontal extension unit 10 allows the operator to pull the container away from the transportation module 6. This is not an indexing feature as recited in the claimed invention.

In the claimed invention, for example, as the product is stacked, the containers will be indexed on the pivoting conveyor mechanisms, via a belt, for example. The belt may be used to increment the container as the container becomes full. This can be accomplished by using the control "C" to maintain a count of the product which is ejected from the ejection stations. For example, as the product "P" is ejected, the belts or rollers of the pivoting conveyor mechanism will move or index the containers a set distance, substantially equivalent to several product widths.

Independent Claim 36

Contrary to Schererz, claim 36 recites, in part

> ... dropping product in a substantially horizontal orientation into the container;
> covering the container to ensure product is not ejected therefrom during the dropping step ....

Schererz does not show covering the container to ensure that product is not ejected therefrom. In Schererz, the product is guided into the container by guide wall 14, but there is no cover on the container, or associated with the container.

Dependent Claims

The Examiner is of the opinion that dependent claims 2, 3, 6-8, 11-13, 16-19, 22-24, 27, 28, 30, 31, 34, 35, 37 and 38 are also anticipated by Schererz. Applicants first note that these claims depend from allowable base claims and are thus allowable for the reasons stated above.

Also, these claims are distinguishable over Schererz, on their own merits. For example, Schererz does not show the pivoting mechanism including a transporting device to transport the container between an induction transport and an exit transport (claim 7). In fact, Schererz shows that the containers are manually placed on and off of the pivot mechanism. Additionally, as argued previously, Schererz does not show indexing the container a predetermined distance on the at least one corresponding pivoting mechanism during injection of the product into the container (claims 8, 19 and 30). Schererz also does not show an induction transport and an exiting transport positioned at respective ends of the pivoting mechanism for moving the container (claim 13). In fact, Schererz is silent as to any container conveying mechanisms, other than for the pivoting mechanism. Nor does Schererz show a container lifting and

lowering device which incrementally positions the container either upwards or downwards (claim 30).

35 U.S.C. §103 Rejections

Claims 4, 5, 14 and 25 were rejected under 35 U.S.C. §103(a) over Schererz in view of U. S. Patent No. 5,503,388 to Guenther et al. Claims 9, 10, 20 and 33 were rejected under 35 U.S.C. §103(a) over Schererz in view of U. S. Patent No. 6,328,302 to Hendrickson et al. These rejections are respectfully traversed.

Applicants first note that the Guenther reference shows stacking of the product in a vertical orientation. But the stacking does not take place in a container. It is only after the product is stacked at an incline, is it then placed in a container, which is not pivoted in any manner. Instead, the containers are merely conveyed on a transport. Thus, Applicants submit that there is no motivation to combine the Schererz and Guenther references.

Additionally, even if these references were combined, the resultant mechanism would not include the features of the claimed invention. As argued above, the Schererz reference does not show the features of the base independent claims. Also, Guenther does not show an ejection station of opposing belts. In Guenther, the ejection station, which is the "station" prior to

placing the product into the container, is merely a sweeping mechanism. More particularly,

> The documents diverted at the selected diverter station are transported by the inclined reach to a corresponding buffer assembly which horizontally and sequentially stacks and aligns the documents. The buffer assembly incorporates a sweeping device which engages and selectively sweeps the stacked documents. (col. 2, lines 41-49.)
>
> (Emphasis added.)

As to the Hendrickson reference, Applicants submit that there are no sensors which are designed to detect the position of the container associated with an induction transport or a pivoting mechanism. Although Hendrickson shows sensors, these sensors are designed specifically for capturing the position of mail pieces or a reject tub. To the best of Applicants' understanding, there is no description of any further purposes of the sensors. Also, Applicants note that col. 12, lines 13-40 does not address the use of sensors. If there is to be any interpretation, this passage concerns reading bar codes from the flat mail, itself.

Other Matters

Claim 39 is added for the Examiner's further consideration. Claim 39 further defines the feeding area which is formed substantially by an upper and lower mechanism. This is not show in the Schererz reference.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant submits that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicant hereby makes a written conditional petition for extension of time, if required.

Respectfully submitted,

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